

So Ordered.
Dated: June 7th, 2017



Frank L. Kurtz
Frank L. Kurtz
Bankruptcy Judge

METINER G. KIMEL - State Bar No. 21280
KIMEL LAW OFFICES
205 N. 40th Ave., Ste 205
Yakima, WA 98908

Telephone: (509) 452-1115
Facsimile: (509) 965-5860

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re: BRIAN R LUSK,
Debtor,

Case No. 16-03214
Chapter 12

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW WITH
REGARD TO THE DEBTOR'S FIRST
AMENDED CHAPTER 12 PLAN, AS
MODIFIED**

The matter of the hearing on confirmation of the Debtor's First Amended Chapter 12 Plan in the case of In re Brian Lusk, Case No. 16-3214, came before the Honorable Frank L. Kurtz on June 5, 2013 at 10:00 a.m.. Metiner G. Kimel, counsel for the Debtor appeared and Brian Lusk appeared on his own behalf. Other appearance are as noted in the record.

At the time of the hearing on confirmation of the Plan, the following papers, declarations and documents were before the Court:

<u>Exhibit</u>	<u>Name of Document</u>	<u>Docket no.</u>
1	Minute Entry Re: Valuation Hearing. NOT HELD. STRICKEN.	19
2	Debtor's Chapter 12 Plan and Accompanying Documents (the "Plan")	41
3	Notice of Hearing on Debtor's Chapter 12 Plan.	45
4	Debtor's First Amended Chapter 12 Plan and Accompanying Documents (the "Plan")	67
5	Notice of Hearing ON Debtor's Chapter 12 Plan and Time to Object	68
6	Motion to Sell Property Fee and Clear of Liens: Parcel 14402	70
7	Notice of Motion to Sell Free and Clear and Time to Object	71
9	Certificate of Service re: Motion to Sell Free and Clear of Liens	72
10	Amended Motion to Sell Property Fee and Clear of Liens: Parcel 14402	73
11	Notice of Motion to Sell Free and Clear and Time to Object	74
12	Certificate of Service re: Motion to Sell Free and Clear of Liens	75
13	Declaration of Brian Lusk in Support of Confirmation of Chapter 12 Plan	82
14	EX PARTE MODIFICATION TO DEBTOR'S FIRST	83

	AMENDED CHAPTER 12 PLAN (Modification of Plan – With Certificate of No Adverse Effect)	
15	Trustee Confirmation Summary	84
16	the Proposed Findings and Conclusions With Regard to Confirmation of Debtor’s First Amended Chapter 12 as Modified	

Based upon the above referenced pleadings, all additional pleadings filed in the case, and the testimony provided to the Court at the hearing on Confirmation, the Court now makes the following findings and conclusions:

1. The Plan provides for the submission of all or such portion of the Debtor’s future earnings or other income to the supervision and control of the trustee as necessary for the execution of the Plan, thereby satisfying the requirements of Bankruptcy Code §1222(a)(1).

2. The Plan provides for full payment, in deferred cash payments, of all claims entitled to priority under section 507, thereby satisfying the requirements of Code §1222(a)(2).

3. The Plan complies with Sections 1222(3) classification and contents of a plan in that the Plan appropriately places claim in the same class only if they are claims that are substantially similar to other claims or interests in the class.

4. Article II of the Plan designates the classification of claims and interests

5. Article II of the Plan designates the classes of claims.

6. Article IV of the Plan specifies the treatment afforded to each of classes of claims and interests under the Plan.

7. The Plan provides all Claims within the same class are receiving identical treatment unless the holder of a claim has agreed to less favorable treatment. All members of each class are treated equally with respect to their class.

8. As the Debtor does not have any child support obligations, Code § 1222(a)(4) is not applicable in the Debtor’s case.

1 9. Because the Plan satisfies the requirements of 11 U.S.C. §§ 1222 (a)(1),(2),(3),
2 and (4), the Plan complies with the provisions of 11 U.S.C. § 1225(a)(1).

3 10. Based upon the Declaration of Brian Lusk filed in support of confirmation of the
4 Plan, his 2013 farm income comprised 82% of his gross income, his 2014 farm income
5 comprised 82% of his gross income, and his 2015 farm income comprised 71% of his gross
6 income. Accordingly, the Debtor was eligible for Chapter 12 at the time that the bankruptcy case
7 was filed.

8 11. The filing fees in this case were paid as of the date that the case was filed, and
9 therefore the requirements of Bankruptcy Code §1225(a)(2) have been satisfied.

10 12. As there were no objections filed to the First Amended Plan, and since the Plan
11 has addressed the prior objection of the IRS regarding the treatment of its claim, and as the Plan
12 provides for payment of 100% of all allowed claims, both secured and unsecured, the Court finds
13 that the Plan satisfies the good faith requirement of Code § 1225(a)(3).

14 13. As of May 20, 2017, the total amount of Filed Claims that are general unsecured
15 claims (Class 13 Claims) total approximately \$64,000.00. The Plan proposes to pay \$66,000.00
16 on account of Class 13 claims over the five year term of the plan at a rate of \$13,200.00 per year,
17 starting with 2018. As set forth under Section IX of the Plan, the Debtor believes that unsecured
18 creditors would receive 100% of their Allowed Claims in a Chapter 7 proceeding. Since the Plan
19 proposes to pay more (\$66,000.00), than the total Allowed Filed unsecured claims in the Case,
20 the Plan satisfies Code § 1225(a)(4).

21 14. As there has been no objections filed to the Plan, all secured creditors are deemed
22 to have accepted the Plan, the Plan satisfies the requirement of Code § 1225(a)(5)..

23 15. Based upon the budget projections attached as Exhibits 1 through 6 to the Lusk
24 Declaration and the Amended Motion to Sell Property Fee and Clear of Liens: Parcel 14402 the
25 Debtor satisfies the requirements of Bankruptcy Code §1225(a)(6) that he be able to make all
26 payments under the plan and be able to comply with the plan. Bankruptcy Code §1225(a)(7) that
27

1 I be current on any domestic support obligations that “first become payable after the date of the
2 fling of the petition.”

3 16. Based upon the Lusk Declaration that he owed no domestic support obligations,
4 Bankruptcy Code §1225(a)(7) is satisfied or inapplicable in this Case.

5 17. As there has been no objection from the Trustee or any unsecured creditor, Code
6 § 1225(b) is not applicable to the case.

7 18. The Ex Parte Modification To Debtor’s First Amended Chapter 12 Plan (The
8 Modification of Plan – With Certificate of No Adverse Effect) does only effects the Class 8
9 Secured Claim of HoJo, which has requested the modification, and therefore has no adverse
10 effect as to any other creditors in the case.

11 These shall constitute the findings of fact and conclusions of law of the Court in
12 accordance with Federal Bankruptcy Rule of Procedure 7052.

13
14 Presented by:
15 METINER G. KIMEL, counsel for the Debtor.
16
17
18
19
20
21
22
23
24
25
26
27